IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

MFA.No. 803 of 1995(F)

O.P(M.V).NO.307/1990 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA DTD. 27/06/1994.
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APPELLANT/PETITIONER:

JANAMMA, W/O. UNNIKRISHNAN NAIR,
KOTTARATHIL HOUSE, AZHOOR,
PATHANAMTHITTA.

BY ADV. SRI.C.B.SREEKUMAR.

RESPONDENTS/RESPONDENTS:
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1. **C.A. VIJAYAN, S/O. AYYAPPAN,**
   CHAVARCODE, ADIVASSANATHU HOUSE,
   VAZHAMUTTOM.P.O., OMALLUR,
   PATHANAMTHITTA.

2. **P. VIJAYAN, S/O. PARAMU,**
   THACHAMPARAMBIL HOUSE,
   PATHANAMTHITTA.

3. **THE ORIENTAL INSURANCE CO. LTD.,**
   CHANGANACHERRY.

BY ADV. SRI.MATHEWS JACOB (SR.).

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.803 OF 1995

Dated 14th August, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the claimant whose claim was dismissed on the question of time bar. The Hon'ble Supreme Court in ***New India Assurance Co. Ltd.*** v. ***C. Padma and another*** ((2003) 7 SCC 713) held that since the statutory requirement of filing application under Section 166(3) of the Motor Vehicles Act was deleted by amendment Act 54 of 1994, amendment is applicable to all the pending cases before the Motor Accidents Claims Tribunals and High Courts. Hence, dismissing the claim petition on the ground of limitation is not correct. Appellant approached the Tribunal claiming that she sustained serious injuries in a motor accident due to the negligence of the driver of the vehicle insured by the third respondent insurance company. Tribunal found that the first respondent driver was negligent and the offending vehicle was validly covered by the third respondent insurance company. According to the insurance company, their liability was limited to Rs.50,000/=. Claim was also only for Rs.50,000/= and claim was liable to be dismissed as it was filed after one year and there was six months delay in filing the application.

Tribunal has held that the appellant is entitled to only Rs.12,000/= (compensation under Section 140 of the Motor Vehicles Act) but for limitation. The appellant sustained the following injuries:

> "1. Abrasion (R) Big toe 2 x 4.5 cm., (2) Abrasion below (L) knee jount 3 x 2 cm (3) Contused abrasion upper third of (R) lower leg in front 2 x 1.5 cm. (4) Abrasion left loin 4 x 3 cm, X-ray showed crack fracture (R) Tibia."

It is noticed by the Tribunal that even though there was a fracture, extent of disability was not proved. Hence, no amount was awarded for pain and suffering, loss of earning power etc. The Tribunal held that at the maximum he is entitled to the amount payable under Section 140 of the M.V. Act. We are of the view that, considering the nature of injuries, for treatment, pain and suffering, disability etc. under Section 166 also he is not entitled to a higher amount and the compensation awarded is just and reasonable.

In the above circumstances, the appeal is allowed. Third respondent insurance company is directed to deposit the compensation of Rs.12,000/= calculated by the Tribunal with 7.5% interest from the date of application

till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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